

RECORDING REQUESTED BY
And When Recorded Mail to:

STATE OF CALIFORNIA
SAN FRANCISCO BAY
CONSERVATION & DEVELOPMENT COMMISSION
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
Attn: Marc Zeppetello

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Pursuant to Government Code § 27383

**GALILEE HARBOR SETTLEMENT AGREEMENT
SECOND AMENDMENT**

PARTIES

The PARTIES to this GALILEE HARBOR SETTLEMENT AGREEMENT SECOND AMENDMENT (“SECOND AMENDMENT”) are the State of California, acting by and through the San Francisco Bay Conservation and Development Commission (“Commission”), and the Galilee Harbor Community Association (“GHCA”), a California nonprofit mutual benefit corporation, individually and as the authorized representative of its members as of the effective date of this SECOND AMENDMENT, who are identified in Amended Exhibit A hereto (“GHCA members”).

RECITALS

A. In June of 1996, the Commission and GHCA concluded an agreement to compromise and settle claims made by the PARTIES concerning the use of four parcels of property and portions of four City of Sausalito (“City”) streets leased by the City to GHCA, comprising some 6.8 acres of land, located in and along the shore of Richardson Bay in the City (the “AGREEMENT”). The PARTIES’ contentions are set forth in detail in recitals to the AGREEMENT. The AGREEMENT provided for GHCA to carry out restoration and development plans on the

site, as specified in the AGREEMENT, and for dismissal of an action filed by the Commission against GHCA and its members entitled *State of California ex rel. San Francisco Bay Conservation and Development Commission vs. Galilee Harbor Community Association*, Marin County Superior Court No. 149568.

B. The AGREEMENT included parties who then owned fee title interest in a portion of the lands subject to the AGREEMENT, namely: Joseph J. Giraudo, individually and as trustee of the Kristopher Trust; Beverly J. Giraudo; Stephen L. Pasquan, and Pamela Pasquan. In 1997, GHCA purchased these parties' interests in the subject lands. Having no continuing interest in the subject lands, these parties to the AGREEMENT are not parties to this SECOND AMENDMENT.

C. Effective September 3, 1998, the Commission approved a GALILEE HARBOR SETTLEMENT AGREEMENT FIRST AMENDMENT ("FIRST AMENDMENT") providing for changes to the AGREEMENT affecting project fill, dredging, and certain structures. On July 10, 1998, October 8, 1998, and November 10, 1998, the Commission's Executive Director approved minor modifications to the AGREEMENT, in accordance with the procedures set forth in paragraph IV.G of the AGREEMENT.

D. The AGREEMENT authorized a project known as the Galilee Maritime Service Harbor Project ("Project"), to include various public access and open space improvements, marsh restoration, remediation of site contamination, mooring for a total of 38 vessels, no more than four of which shall be houseboats and the remainder of which may be live-aboards, subject to specified conditions and restrictions, a marine services building, and various other project elements (see AGREEMENT, Sections I and III).

E. GHCA has completed development of the In the Bay portion of the Project, dedication of the public access and open space components, marsh restoration, contamination remediation, and portions of the development planned for the 100-Foot Shoreline Band and the upland. In addition, GHCA has completed all public access improvements except: (1) paving of eight newly installed public parking spaces, which has been deferred at the request of the City of Sausalito in order to coordinate with rehabilitation of Dunphy Park and which is addressed by this SECOND AMENDMENT; and (2) installation of a public access pathway along the spit on Parcel 4, which GHCA has requested be deleted as a requirement based on safety and other considerations and which is also addressed by this SECOND AMENDMENT.

F. Under the AGREEMENT, the residential marina on submerged property known as Parcel 2 provides berths for 34 navigable live-aboard vessels and 4 houseboats to be occupied by maritime workers and artists that meet low-moderate income restrictions. AGREEMENT, Paragraph III.D.3.c. If the Commission determines, after the effective date of the AGREEMENT, that Parcel 2 is needed for water-oriented uses and public trust needs, occupancy of the marina by houseboats and live-aboards shall be terminated at the end of the first 20-year term or no less than 15 years from the date of such determination. *Id.* at Paragraph III.D.4. The Commission has not made such a determination. If a date certain for termination of residential use of the marina has not been set by the Commission at the conclusion of the original 20-year term of the AGREEMENT, then such use may be authorized for one additional 20-year period if, after a public hearing, the Commission determines that: (1) there is no foreseeable need for Parcel 2 to be used for water-oriented and public trust uses within the next 20 years, and (2) GHCA has fully complied with specified conditions of the AGREEMENT. *Id.* at Paragraph III.D.5.

G. In requesting authorization for continued residential use of the marina for one additional 20-year term, GHCA has also requested, based on GHCA's experience in implementing the Project and/or changed circumstances, that the Commission approve certain modifications to the Project. In addition, GHCA has requested that the Commission authorize termination of the surety bond previously provided by GHCA pursuant to Paragraph IV.F.6.a of the AGREEMENT. The Commission agrees to GHCA's requested modifications to the Project and to terminate the surety bond, subject to the terms and conditions of this SECOND AMENDMENT.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the following terms and conditions, the PARTIES agree as follows:

I. FINDINGS OF THE COMMISSION.

The San Francisco Bay Conservation and Development Commission by its approval and execution of this SECOND AMENDMENT finds and declares that:

A. No Foreseeable Need for Parcel 2 To Be Used For Water-Oriented and Public Trust Purposes.

In January 2015, GHCA submitted a draft "Public Trust Needs Report" examining the need for Parcel 2 to be used for water-oriented and public trust purposes within the next 20 years. Commission staff provided comments on the draft report, requesting GHCA review additional information including the relevant population growth data and information about

planned or possible expansions to public water-oriented facilities in Sausalito. On January 31, 2016, GHCA submitted a revised, final “Public Trust Needs Report” (“Report”) including additional information requested by Commission staff.

The Report examined potential public trust needs for the site related to marine commerce, navigation, fishing, protection of marine ecology, and public recreation. The Report reviewed public trust priority uses throughout the Bay Area, in Richardson Bay, in the City of Sausalito, and at the site itself, using authorities such as the McAteer-Petris Act, the San Francisco Bay Plan, the Richardson Bay Special Area Plan, the City of Sausalito’s Marinship Specific Plan, which is part of the City’s General Plan and covers the area of the site. GHCA provides for existing public trust needs by maintaining tidal marsh, providing a pump-out and dinghy dock, a shoreline path, access to the docks and viewing platform, an ADA-compliant ramp to one-dock, a bikeway connecting to existing bikeways to the north and south, and an access connection to and from Dunphy Park – all open to the public. GHCA supports recreational boating public trust needs throughout the City of Sausalito and the Bay Area by providing marine services to the boating community as a “live-work marina.”

The site is small, and unlikely to be needed for public trust needs in the future outside of the uses that already take place at Galilee Harbor. The Report examined future public trust needs, including population projections and current development trends. According to the Report, Sausalito provides for 20% of the recreational boat facilities in the Bay Area, and at the time of the Report recreational boat marinas in Sausalito reported an approximate vacancy rate of 14%. Furthermore, the Report examined other future potential recreational public trust needs, including planned future improvements to existing parks and public areas along the

Sausalito waterfront. Based on the analysis provided in the Report, there is no foreseeable need for Parcel 2 to accommodate an increase in the City of Sausalito for recreational boat berths or recreational public waterfront parks in the next 20 years.

Based on results of study, there is no foreseeable need for Parcel 2 to be used for water-oriented and public trust purposes within the next 20 years.

**B. GHCA Has Complied With Marina Conditions (Including Affordability Controls).
AGREEMENT Section III.D.**

GHCA has complied with all marina conditions set forth in Section III.D of the AGREEMENT, including all conditions related to construction activity, operation of the marina, occupancy, waste treatment, and affordability.

Pursuant to the requirements of Paragraph III.D.c.2 of the AGREEMENT, on December 16, 1998, Commission staff approved an Agreement Imposing Low-Income Occupancy Restrictions dated September 29, 1998 submitted by GHCA, and including as parties GHCA, the Commission, the City and EAH, Inc. (formerly known as Ecumenical Association for Housing), which was subsequently recorded in the County of Marin on February 14, 2000. Pursuant to the Agreement Imposing Low-Income Occupancy Restrictions, GHCA has submitted regular certifications of compliance with the restrictions of Section III.D of the AGREEMENT. The most recent certification of compliance is dated June 10, 2016, and certifies that 35 of the 38 berths are occupied as low- to moderate-income units, consistent with the restrictions of Section III.D of the AGREEMENT. As of the date of this SECOND AMENDMENT, GHCA has fully complied with specified conditions of the AGREEMENT related to affordable housing controls.

C. Public Access Conditions. AGREEMENT Section III.B. and III.C.

Pursuant to Sections III.B and III.C of the AGREEMENT, On December 7, 1998, Commission staff approved a public access and open space deed restriction instrument submitted by GHCA, which was subsequently recorded in Marin County on February 14, 2000. GHCA has completed all required public access developments required by Section III.B, with the exception of the revisions to the public access program agreed to by the PARTIES in this SECOND AMENDMENT including: (1) deferring paving the 8 public access parking spaces pending the City of Sausalito's final approval of rehabilitation plans for Dunphy Park; and (2) elimination of a public access pathway on Parcel 4 due to public safety concerns. As the PARTIES have agreed in this SECOND AMENDMENT to modify the public access program for the Project, the PARTIES agree that GHCA has fully complied with the conditions of the AGREEMENT related to public access sufficient to allow an additional 20-year extension of residential use at Parcel 2.

D. Marsh Restoration Conditions. Section III.E of the AGREEMENT.

Pursuant to Section III.E of the AGREEMENT, GHCA submitted a marsh restoration plan that was approved by Commission staff on November 24, 1998. The marsh restoration was completed in 2004. GHCA has fully complied with specified conditions of the AGREEMENT related to marsh restoration.

E. Conclusion.

With the exception of the changes to the Project, including certain public access components, as agreed to in the SECOND AMENDMENT, the Commission finds that GHCA has complied with all conditions of the AGREEMENT in implementing the waterside and public access areas and improvements described in Section I of the AGREEMENT.

II. AUTHORIZATION

As authorized by Paragraph III.D.5 of the AGREEMENT, and based on the preceding Commission findings, the Commission renews its approval of the AGREEMENT, subject to the provisions of this SECOND AMENDMENT, and reauthorizes residential use of the marina for one additional 20-year period, commencing on the effective date of this SECOND AMENDMENT.

III. PROJECT MODIFICATIONS

Based on GHCA's experience in implementing the Project and/or changed circumstances, GHCA has requested certain modifications to the Project as summarized in the following paragraphs of this Section III, Project Modifications. Subject to the terms and conditions of this SECOND AMENDMENT, the Commission agrees to GHCA's requested modifications to the Project. Amendments to the AGREEMENT to implement these modifications are set forth below in Section IV, Amendments.

A. Phasing.

The AGREEMENT allows for the various authorized project features to be implemented in four phases. The AGREEMENT provides:

GHCA shall use its best efforts to obtain funding adequate to construct all improvements in a one phase, from commencement of work through completion of the entire Galilee Maritime Service Harbor project. If restricted funding requires phasing of the project, the improvements shall be constructed in the order and within the time set forth [in the AGREEMENT].

AGREEMENT, Paragraph III.F.3. The AGREEMENT further provides that GHCA shall not commence any of the work called for in any later phase unless and until it has completed all earlier phases and obtained financing adequate to complete all work in the later phase. *Id.* Paragraphs III.F.3.a(3), III.F.3.b(3), III.F.3.c(3). III.F.3.d(3).

According to GHCA, these provisions have hampered its ability to obtain incremental funding as the project proceeds, handicapping funding efforts, resulting in loss of otherwise available funding, and slowing progress on the Project. In particular, these provisions have prevented GHCA from accessing financing sources that would otherwise be available for construction of the upland Marine Service Building (designated for Phase IV). GHCA has requested that these restrictions be eliminated to enable it to obtain conventional financing for construction of this building and to complete other Project features.

In general terms, the main Project features completed as of the effective date of this SECOND AMENDMENT include, but are not limited to: construction of a replacement marina with 34 navigable live-aboard vessels and four houseboats occupied by marine workers and artists; improvement of public access amenities; marsh restoration; remediation of contaminated soils; paving and landscaping of the parking area on Parcel 1; and removal of the dry docks from the Bay, eliminating 55,000 square feet of Bay fill. Project features not yet

completed in include, but are not be limited to: finishing the parking area improvements on Parcel 3; construction of the Marine Service Building (for maritime shops, GHCA offices, and restrooms); and rehabilitation of an existing structure (known as the “Tin Shed”) to serve as a Fish and Bait shop.

More specifically, the main features of Phase I, as designated in the AGREEMENT, include, but are not limited to: dedication of public access and open space areas; dredging and excavation associated with marina construction; installation of berths and publicly accessible docks; connection of all vessels to an on-shore sewage system; rehabilitation of pilot houses with displays; providing public parking, shoreline paths, and signage; installing a small boat launch float, gangway and deck for public use; and implementing shoreline protection and marsh planting. Prior to the effective date of this SECOND AMENDMENT, GHCA has completed all Phase I features except for installation of a public access pathway out to the end of the spit on Parcel 4, which GHCA has requested be eliminated as a Project feature by this SECOND AMENDMENT due to public safety concerns, as discussed below.

The main features of Phase II, as designated in the AGREEMENT, include: rehabilitation of the boat ways; construction of the boat works; and paving and lighting of all parking areas and landscaping of the non-public parking areas. Prior to the effective date of this SECOND AMENDMENT, GHCA has completed rehabilitation of the boat ways, but with a modification required by the California Department of Toxic Substances Control (DTSC) and for which GHCA requests approval from the Commission by this SECOND AMENDMENT, as discussed below. GHCA has not yet built the boat works and has requested changes to this Project feature by this SECOND AMENDMENT to reduce the size of the open work area and provide additional open

space, discussed below. GHCA has completed all parking area improvements, except for deferring the paving of 18 parking spaces on Parcel 3 at the request of the City of Sausalito and for which GHCA requests approval from the Commission by this SECOND AMENDMENT, as discussed below.

The main features of Phase III, as designated in the AGREEMENT, include: renovation of the future Fish and Bait Shop building, except for the interior where GHCA's offices are located; construction of a public deck adjacent to this building; and linking the deck with the shoreline walkways. GHCA has not yet commenced construction of these Phase III Project elements.

The main features of Phase IV, as designated in the AGREEMENT, include: construction of the Marine Service Building; construction of a public deck adjacent to this building; renovation of the interior of the Fish and Bait shop building and establishment of fish and bait sale uses; and all remaining Project features. GHCA has not yet commenced construction of these Phase IV Project elements.

In summary, GHCA has completed all of the main features of Phase I and Phase II – the two phases that involve work in the Bay and the majority of work in the 100-foot shoreline band -- including construction of the marina, removal of Bay fill, marsh restoration, and the installation of public access improvements, with the exception of certain modifications requested by this SECOND AMENDMENT. The Project features that remain to be completed primarily involve work in upland areas, including construction of the Marine Service Building, and renovation of an existing building (the future Fish and Bait Shop) in the shoreline band. For these reasons, the Commission approves GHCA's request to eliminate the AGREEMENT's restrictions on funding and phasing (*i.e.*, the provisions stating that it may not commence any of

the work called for in any later phase unless and until it has completed all earlier phases and obtained financing adequate to complete all work in the later phase), subject to the terms and conditions of this SECOND AMENDMENT.

B. Restricting Public Access to the Spit on Parcel Four.

The AGREEMENT provides that GHCA shall install a 5-foot wide wheelchair-accessible crushed granite public access pathway along the spit on Parcel 4, the small parcel bayward of the GHCA office building, and Humboldt Street, the “paper street” that separates the office building from Parcel 4. AGREEMENT, Paragraphs I.B.11, and III.F.3.a(21). The AGREEMENT calls for unrestricted public access on the spit, but GHCA has requested that this requirement be modified due to public safety concerns. In addition, the City of Sausalito Police Department has recommended that the spit on Parcel 4 remain closed to public access because the area is secluded and in the past had become the site of illegal activities including public drunkenness, theft, and narcotics-related offenses; if the area were reopened and available for unrestricted public access, the Police Department considers it likely that the spit would once again be used by people for illegal activities.

Parcel 4 is a narrow, 16,000 square foot parcel lying largely if not entirely below the mean high tide line. A small portion of the parcel – estimated to be about 20% -- forms the bayward end of the spit, where the highest area, which is rocky and vegetated with bushes and trees, is rarely, if ever inundated. However, the rising bay is encroaching. Over the past 20 years, storms have deeply eroded the spit, leaving tree stumps and a steep embankment on the long northern bank, and eroding the eastern end.

As required by the AGREEMENT, GHCA dedicated Parcel 4 to the City Sausalito for public access and/or open space uses. The spit was open for unrestricted public use before and after the effective date of the AGREEMENT. However, over the years, substantial changes have affected Parcel 4, accounting for the fact that GHCA has not constructed the public path anticipated by the AGREEMENT. Those changed circumstances include: (1) the unanticipated delay in completing conversion of GHCA's office building to a Fish and Bait Shop, which will include a deck that was to connect to the path along the spit; (2) the City of Sausalito's decision not to accept the offer from GHCA for transfer of control and maintenance responsibility for Parcel 4; (3) the accelerating erosion of the spit such that little of the land remains above the tides; and (4) abusive use of the spit for homeless encampments, drug and alcohol use, and other illegal activities which have imposed burdens and responsibilities on GHCA that are beyond its capacity to remedy.

Acting on recommendations from City of Sausalito police officers and others in the community, in the early 2000s, GHCA sought to curb the abuses of the spit and increase public safety by extending a pre-existing fence that ran from the end of the spit westward to the middle of Humboldt Avenue. Addition of temporary fencing along the rest of the southern boundary severed access to the spit from the south side, where GHCA's property abuts Dunphy Park. According to GHCA, the fence greatly reduced vagrancy and law enforcement problems and also largely ended the destructive practice of boaters beaching small boats on the spit and scrambling up the spit's northern bank, contributing to erosion on the spit's north side.

For these reasons, GHCA has requested that the AGREEMENT be amended to authorize the fence extension along the northern boundary of Parcel 4 to control public access to the spit, and to provide that the spit shall be open to public access at such time and subject to such conditions as the Executive Director, in consultation with the Sausalito Chief of Police and GHCA, determines that public access to the spit can be allowed consistent with public safety and law enforcement considerations. GHCA also proposes to amend the AGREEMENT to provide that it shall develop and implement a plan, subject to approval of the Executive Director, to enhance marsh and other habitat on Parcel 4, including the rehabilitation or establishment of approximately 900 square feet of marsh area on Parcel 4.

Based on GHCA's public safety concerns, as confirmed by the City of Sausalito Police Department, and on GHCA's proposal for marsh restoration on Parcel 4, the Commission approves GHCA's request to restrict public access to the spit on Parcel 4 subject to such conditions as the Executive Director determines, in consultation with the Sausalito Chief of Police, are appropriate consistent with public safety and law enforcement considerations.

C. Rehabilitation of the Boat Ways.

The AGREEMENT provides that GHCA shall rehabilitate the shipways, or boat ways, that had enabled work on large vessels during World War II. AGREEMENT, Paragraphs I.B.20. and III.F.3.b.(1). However, those boat repair and maintenance activities left contaminated soils that had to be remediated before GHCA could use the boat ways as an element of its larger plan for a broad array of marine services. GHCA prepared a Removal Action Work Plan for Parcel 1, which was approved by DTSC on March 23, 1999, and provided for capping and containment of soil contaminated with heavy metals, petroleum hydrocarbons, and other hazardous

substances. During the capping process at and in the vicinity of the boat ways, DTSC raised a concern while on site regarding the potential migration of contamination from the area between the rails. As a result, DTSC approved a change to the Removal Action Work Plan for this area: replacement of the previously proposed cap, which consisted of plastic liners, with a 40-foot by 30-foot concrete cap over the marine haul-out ways. This solution covered the rail beds with a concrete haul out ramp that could be used to haul out and launch small vessels while containing any contamination.

Although GHCA had hoped to rehabilitate the boat ways, the feasibility of that plan was in doubt because of their deteriorated condition. The concrete ramp addressed the contamination issue while providing a means for GHCA to haul out and launch small vessels. The concrete ramp added approximately 83 square of Bay fill beyond the amount that would have been needed if the rails had been rehabilitated.

In recognition of DTSC's concerns to prevent potential migration of contamination from the former boat ways, the Commission approves GHCA's request to modify the AGREEMENT to reflect this Project change.

D. Reduced Open Work Area and Increased Open Space and Public Accessway.

The AGREEMENT provides that GHCA shall install a 7,400 square foot open work area for boat maintenance and repair activities. AGREEMENT, Paragraphs I.B.20. and III.F.3.b.(1). However, GHCA's current plans for the Marine Service Center have eliminated boat bottom jobs and boat repair work involving the potential for generating hazardous waste. Instead, GHCA now plans to focus on small boat building and wood working that would not involve the use of hazardous materials. As a result, the Boat Works would be located partly inside the

Marine Service Building and partly in an adjacent outside open work area of 1,075 square feet. In addition, the Maine Service Building would be shifted south (*i.e.*, toward Napa Street) approximately 10 feet (as shown on Amended Exhibit E-2, attached hereto) to create space for the open work area on the north (*i.e.*, Mono Street) side of the building. These modifications will eliminate the need for an open work area on the south side of the building consisting of 7,400 square feet of asphalt paving surrounded by a cyclone fence, and allows maintenance of an additional approximately 4,991 square-feet of grassy open space on the south side of the building.

GHCA also proposes to modify two approved public access features and to add a new one. The previous plan for a publicly accessible breezeway running east-west through the Marine Service Building would be replaced by a new exterior public accessway (of approximately 725 square feet) with a parallel alignment along the south side of the building, connecting to the north to the existing shoreline accessway. On the east (*i.e.*, shoreline) side of the building, GHCA proposes to create an at-grade public viewing and resting area (of approximately 1,360 square feet) with two benches. This would replace a previously planned viewing deck that became infeasible after the elevation was raised by capping of the shoreline to contain contamination. The total area of these two replacement features – 2,085 square feet – is approximately the same as the access features GHCA proposes to replace. On the west (*i.e.*, parking lot) side of the building, GHCA proposes a new accessway that will connect the south-side accessway with the existing shoreline path in the area of the Mono Street Marsh, providing for public access on all sides of the building. See Amended Exhibit E-2, attached hereto. This new path would add approximately 720 square feet of public access.

The approximately 4,991 square-feet of grassy open space overlies a DTSC-required high-density polyethylene liner which prevents surface water infiltration and the migration of contaminated soil which could otherwise adversely affect Bay water quality. To prevent damage to the liner, GHCA proposes that the open space area would be available to the public on a limited basis, for example, for planned gatherings where the sponsors could be alerted in advance of the need to avoid engaging in activities that might cause damage to the liner.

Given the increased amount of open space and access proposed by GHCA, which would be provided in a manner to maintain protection of the capped underlying contaminated soils, as well as the additional proposed public access area, the Commission approves these requested changes to the Project.

E. Paving the Parking Spaces on Parcel 3.

The AGREEMENT provides that GHCA shall provide and pave 64 parking spaces, including eight spaces signed and available for public access during daylight hours. AGREEMENT, Paragraphs II.B.19; III.F.3.a(1), III.F.3.a(2)(29), III.F.3.b(1), and III.F.3.b(2)(4). Prior the effective date of this SECOND AMENDMENT, GHCA has provided and paved 46 parking spaces in the parking lot located on Parcel 1, and has also provided 18 parking spaces, including eight public spaces, on Parcel 3, adjacent to Dunphy Park. GHCA has deferred paving the 18 parking spaces on Parcel 3 at the request of the City of Sausalito.

The City of Sausalito is currently planning for the rehabilitation of Dunphy Park, and in connection with that planning process has asked GHCA to defer paving the 18 spaces on Parcel 3 pending completion of the City's planning process. Depending on the final plans for the park,

the parking spaces on Parcel 3 may be reconfigured, but GHCA would continue to provide 18 parking spaces, including eight public access spaces. GHCA anticipates that the paving of the parking spaces will be done by the City's contractor, with reimbursement by GHCA.

Therefore, to allow for coordination with the City of Sausalito's rehabilitation of Dunphy Park, GHCA requests that final configuration, paving, and landscaping of the 18 spaces on Parcel 3, including the eight public spaces, be deferred for up to one year from the start of construction on the City's approved rehabilitation plans for the Park. GHCA further requests that the Commission authorize the Executive Director to extend the time for paving the 18 parking spaces on Parcel 3, including the eight public spaces, for good cause shown, if necessary to allow GHCA to coordinate with the City of Sausalito's plans and schedule for rehabilitation of Dunphy Park.

To enable GHCA to continue to coordinate with the City of Sausalito's plans for rehabilitation of Dunphy Park, the Commission approves GHCA's request, provided that in the interim, pending the rehabilitation of Dunphy Park, GHCA shall continue to provide at all times eight spaces signed and available for public use.

IV. AMENDMENTS

To implement the Project Modifications described above in Section III of this SECOND AMENDMENT, the Commission and GHCA agree to the following amendments to the AGREEMENT. New text is shown in yellow highlighting; deleted text is shown in strikeout.

A. At page v, the LIST OF EXHIBITS is amended to read as follows:

AMENDED

EXHIBIT A Galilee Harbor Community Association Members (October 2016)

EXHIBIT B Site Map - - Galilee Harbor

EXHIBIT C Parcel Map - - Existing Conditions at Galilee Harbor

EXHIBIT D City of Sausalito Resolution 3979

AMENDED

EXHIBIT E Plans - Galilee Harbor Maritime Service Harbor Project, consisting of Exhibits E-1 (December 2016) and E-2 (December 2016)

EXHIBIT F Notice of Berth Availability

EXHIBIT G California Department of Housing and Community Development Income Standards, Marin County

EXHIBIT H Notice of Completion

EXHIBIT I Judgment

AMENDED EXHIBIT A and AMENDED EXHIBIT E are attached hereto and incorporated by reference into this SECOND AMENDMENT.

B. At page 4, Section I (Project Elements), the first paragraph of this Section is amended to read as follows:

The Galilee Maritime Service Harbor Project as approved by the City of Sausalito shall be modified so as to conform to the project plans set forth in **AMENDED** EXHIBIT E.

Pursuant to these modified plans, and subject to the conditions set forth in the following sections of this AGREEMENT, GHCA is authorized to do the following:

C. At page 5, Section I.A. (Project Elements/In The Bay) Paragraph 7 and is amended to read as follows:

7. Stabilize the shoreline by installing an upland drainage system, reducing the angle of eroding slopes to the natural repose of the mud, covering the slopes with a soil erosion blanket through which marsh plants will be installed and planting ~~27,537~~ **28,437** square feet of marsh habitat; Permanently dedicate the entirety of Parcel 4, a 16,000 square foot area, to the City of Sausalito for public access and/or open space use;

D. At page 6, Section I.B. (Project Elements, Public Access Improvements Within the 100-Foot Shoreline Band), Paragraph 11, as previously amended by the FIRST AMENDMENT, is further amended to read as follows (*i.e.*, this paragraph is deleted):

11. ~~Install a 5 foot wide wheelchair-accessible compacted crushed granite public access pathway along the spit on Parcel 4;~~ **Install an approximately 67-foot long fence and three-foot gate, both made of wire and covered with natural polished reed, as an extension of an existing fence along the northern boundary of Parcel 4 to control public access to the spit on Parcel 4. The spit on Parcel 4 shall be open to public access at such time and subject to such conditions as the Executive Director, in consultation with the Sausalito Chief of Police and GHCA, determines can be allowed consistent with public safety and law enforcement considerations;**

E. At page 6, Section I.B. (Project Elements, Public Access Improvements Within the 100-Foot Shoreline Band), Paragraph 12 is amended to read as follows:

12. Install an 800 square foot deck, which shall be available for public use around the fish and bait shop. **The deck shall be furnished with picnic tables and chairs, providing for views into the landscape of the spit;**

F. At page 6, Section I.B. (Project Elements, Public Access Improvements Within the 100-Foot Shoreline Band), Paragraph 20 is amended to read as follows:

20. Rehabilitate the existing shipways or cover them with a concrete haul-out ramp, increasing Bay fill by 83 square feet, install a ~~7,400~~ 1,075 square foot Open Work Area north of the Marine Services Building, and maintain approximately 4,991 square feet of grass-covered open space on the south side of the building, which shall be fenced but accessible for limited public use that is consistent with protection of the underlying liner that was installed to prevent runoff and leaching of contaminants;

G. At page 6, Section I.B. (Project Elements, Public Access Improvements Within the 100-Foot Shoreline Band), Paragraph 23 is amended to read as follows:

23. Construct and use a two-story Marine Service Center building 83 feet by 47 feet and containing an interior floor area of 5,675 square feet, for marine construction, repair, service, industrial, sales, and arts and craft activities; harbormaster's office; GHCA office; meeting room; and restroom; install two public accessways along the south and west sides of the building, connecting with the existing shoreline accessway along its Bay and Mono Street alignments, thereby providing for public access on all sides of the building; install a public viewing and resting area with two benches adjacent to and along the existing accessway on the shoreline side of the building; and

H. At page 6, Section I.B. (Project Elements, Public Access Improvements Within the 100-Foot Shoreline Band), Paragraph 25 is added to the AGREEMENT and reads as follows:

25. Develop and implement a plan, subject to approval of the Executive Director, to enhance marsh and other habitat on Parcel 4 and the adjacent area of Humboldt Avenue under lease from the City of Sausalito. The plan shall include approximately 900 square feet of marsh area to be rehabilitated or newly established on Parcel 4;

I. At page 18, Section III.F. (Project Conditions, Project Phasing) the heading of this section is amended to read as follows:

F. Project Phasing Development

J. At page 18, Section III.F. (Project Conditions, Project Development), Paragraph 3 (Priority of Improvements) is amended to read as follows:

3. Priority of Improvements. GHCA shall use its best efforts to obtain funding adequate to construct all improvements in one phase, from commencement of work through completion of the entire Galilee Maritime Service Harbor project. ~~If restricted funding requires phasing of the project, the improvements shall be constructed in the other and within the time set forth below.~~ If full funding cannot be obtained to construct all improvements in that manner, GHCA shall continue its best efforts to obtain funding and shall move expeditiously to complete the improvements as funding becomes available. The project phases identified hereinafter provide detailed description of improvements authorized by this AGREEMENT, but do not restrict the

sequence of development; provided that the public access and open space provisions identified in PHASE I shall be completed before commencement of improvements identified in PHASES II, III, and IV.

K. At page 18, Section III.F. (Project Conditions, Project Development), the heading of Paragraph 3.a. (Priority of Improvements, Phase I) is amended to read as follows:

a. PHASE I (~~six month project~~)

L. At pages 19-20, Section III.F. (Project Conditions, Project Development), Paragraph 3.a.(2) (Priority of Improvements, Phase I, Sequence of Work), subparagraph 21, as amended by the FIRST AMENDMENT, is further amended to read as follows:

21. The shoreline paths, including those along Mono and Humboldt Streets and out to the end of the spit, are constructed with a walking surface of compacted crushed roadbase below a finished topping of crushed granite.

M. At page 20, Section III.F. (Project Conditions, Project Development), Paragraph 3.a.(2) (Priority of Improvements, Phase I, Sequence of Work), subparagraph 28, as amended and combined with subparagraph 27 and renumbered subparagraph 20 by the FIRST AMENDMENT, is further amended to read as follows:

20. All parking areas, except for the 18 parking spaces, including 8 public shoreline access spaces, located east of Napa Street, adjacent to Dunphy Park, are prepared with crushed rock road base and drainage system installed.

N. At page 20, Section III.F (Project Conditions, Project Development), Paragraph 3.a.(3) (Priority of Improvements, Phase I, Timing), as amended by the FIRST AMENDMENT, is further amended to read as follows:

(3) Timing. ~~GHCA shall not commence any of the work called for in Phase 1 unless and until it has satisfied the COMMISSION that it has obtained financing adequate to allow completion of a such work.~~ Construction of the work called for pursuant to Phase 1 must be commenced by November 30, 1998 and be completed within five (5) years of such date. (See section IV, paragraph E.)

O. At page 20, Section III.F. (Project Conditions, Project Development), the heading of Paragraph 3.b. (Priority of Improvements, Phase II) is amended to read as follows:

b. PHASE II ~~(six month project)~~

P. At Page 21, Section III.F. (Project Conditions, Project Development), Paragraph 3.b.(2) (Priority of Improvements, Phase II, Sequence of Work), subparagraph 2, is amended to read as follows:

2. Boat ways is rehabilitated or covered with a concrete haul-out ramp.

Q. At Page 21, Section III.F. (Project Conditions, Project Development), Paragraph 3.b.(2) (Priority of Improvements, Phase II, Sequence of Work), subparagraph 4, as amended by the FIRST AMENDMENT, is further amended to read as follows:

4. All parking areas and boat works paved, except that application of road base and paving of the 18 parking spaces, including 8 public shoreline access spaces, located east of Napa Street, adjacent to Dunphy Park, may be deferred to no later than one year from start of construction on rehabilitation plans for Dunphy Park. If recommended by the City of Sausalito as part of its approved rehabilitation plans for Dunphy Park, the Executive Director may authorize reconfiguration of some or all of the

18 parking spaces located east of Napa Street, including possibly moving some of those spaces onto City property, to improve the flow of traffic accessing the park, provided that GHCA shall continue to provide 8 public shoreline access spaces.

R. At Page 21, Section III.F. (Project Conditions, Project Development), Paragraph 3.b.(3) (Priority of Improvements, Phase II, Timing) is amended as follows (*i.e.*, this paragraph is deleted):

~~**(3) Timing.** GHCA shall not commence any of the work called for in Phase II unless and until it has completed Phase I and obtained adequate financing adequate to allow completion of all the Phase II work.~~

S. At page 21, Section III.F. (Project Conditions, Project Development), the heading of Paragraph 3.c. (Priority of Improvements, Phase III) is amended to read as follows:

c. PHASE III (six month project)

T. At page 21, Section III.F. (Project Conditions, Project Development), Paragraph 3.c.(1) (Priority of Improvements, Phase III, Main Features) is amended to read as follows:

(1) Main Features.

Future Fish and Bait shop building (the “Tin Shed”) is renovated, ~~except interior where GHCA offices are located.~~

Future Fish and Bait Shop deck built on the east side of the building, furnished with tables and chairs, and linked on the north side of the building with shoreline walkways.

U. At page 21, Section III.F. (Project Conditions, Project Development), Paragraph 3.c.(3), (Priority of Improvements, Phase III, Timing) is amended to as follows (*i.e.*, this paragraph is deleted):

~~(3) **Timing.**—GHCA shall not commence any of the work called for in Phase III until Phases I and II have been completed and it has obtained financing adequate to allow completion of all the Phase III work.~~

V. At Page 22, Section III.F. (Project Conditions, Project Development), the heading of Paragraph 3.d. (Priority of Improvements, Phase IV) is amended to read as follows:

d. PHASE IV (six month project)

W. At Page 22, Section III.F (Project Conditions, Project Development), Paragraph 3.d.(c) (Priority of Improvements, Phase IV, Timing) is amended to read as follows (*i.e.*, this paragraph is deleted):

~~(3) **Timing.**—GHCA shall not commence any of the work called for in Phase IV until Phases I, II, and II have been completed and it has obtained financing adequate to allow completion of all other Phase IV work.~~

V. TERMINATION OF SURETY BOND

The AGREEMENT requires GHCA to provide a surety bond (or other security device acceptable to the Commission), in an amount acceptable to the Executive Director, to guarantee GHCA's faithful performance of any fill removal order that could be issued by the Commission under the following circumstances:

- If the AGREEMENT becomes null and void because GHCA fails to timely commence or complete the work called for pursuant to Phase I, or fails to timely complete the access amenities called for in Phases II and III, the Commission may provide notice to GHCA to remove any fill or structure placed in the Bay pursuant to the AGREEMENT;
- If the AGREEMENT becomes null and void because any term, condition, or provision of the AGREEMENT is found to be illegal or unenforceable through the application of any statute, administrative decision, or court determination, any fill or structure placed in reliance on the AGREEMENT shall be subject to removal by GHCA to the extent that the Commission determines such removal is appropriate;
- If the Commission revokes the AGREEMENT for GHCA's violation of any term, condition, or provision of the AGREEMENT, the Commission may determine, if it deems appropriate, that GHCA shall remove any fill or structure placed pursuant to the AGREEMENT; or
- If the Commission determines that all or any of the improvements placed in the Bay pursuant to the AGREEMENT have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety, or welfare is adversely affected, the Commission may require that GHCA remove the improvements.

AGREEMENT, Paragraph IV.F.6.a. The AGREEMENT provides that GHCA shall maintain the surety bond in effect until the Commission authorizes its termination or until 60 days following GHCA's submission of the Notice of Completion for Phase II construction, whichever occurs first. *Id.* Paragraph IV.F.6.c.

In accordance with the AGREEMENT, GHCA has posted and continues to maintain a \$75,000 surety bond. According to GHCA, the need to maintain the surety bond, which prevents it from accessing these funds, has substantially contributed to the delays in completing the remaining Project features. GHCA states that terminating the bond, and allowing access to these funds, would make a significant difference in the ability of GHCA, as a group of low- and moderate-income individuals, to complete the upland portion of the Project as envisioned by the Agreement. In particular, GHCA states that access to these funds would provide the necessary basis for GHCA to obtain financing for completion of the Project. GHCA also suggests that the circumstance that might give rise to a fill removal order, as enumerated in the AGREEMENT, are largely moot, and that GHCA has demonstrated its intent and ability to implement and maintain Project in accordance with the Agreement.

In addition to GHCA's reasons for requesting termination of the surety bond, GHCA would no longer be required to maintain the surety bond in any case 60 days following submission of the Notice of Completion for Phase II construction. As discussed above, prior to the effective date of this SECOND AMENDMENT, GHCA has completed construction of: (1) all Phase I features except for installation of a public access pathway out to the end of the spit on Parcel 4, which GHCA has requested be eliminated as a Project feature by this SECOND AMENDMENT; (2) all Phase II public access, open space, or amenity features except for deferring the paving of 18 parking spaces on Parcel 3 at the request of the City of Sausalito and for which GHCA requests approval from the Commission by this SECOND AMENDMENT.

Given that the Commission has had no occasion during the 20-year period since the effective date of the AGREEMENT to consider potentially issuing a fill removal order under the AGREEMENT, and is unlikely to do so in the future, and given that GHCA has substantially completed construction of Phase I and II of the Project, the Commission authorizes termination of the surety bond in the amount of \$75,000 previously provided and maintained by GHCA.

VI. GENERAL PROVISIONS

A. **Effective Date and Binding Effect.** This SECOND AMENDMENT and the foregoing amendments to the AGREEMENT shall become effective on the date that the Commission approves this SECOND AMENDMENT, provided that the Executive Director and an authorized representative of GHCA shall each duly and properly execute this SECOND AMENDMENT within fourteen (14) days of its approval by the Commission.

B. **Recordation.** GHCA shall record this SECOND AMENDMENT in Marin County no later than thirty (30) day after the effective date of the Commission's approval of the SECOND AMENDMENT and shall, within five (5) days after recordation, provide evidence of such recordation to the Commission.

THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Dated: _____

LAWRENCE J. GOLDZBAND
Executive Director

THE GALILEE HARBOR COMMUNITY ASSOCIATION

Dated: _____

RAYLENE GORUM
Vice President